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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,158	04/02/2004	Marcelo Daniel Baru Fassio	NEUR122612	1165
27717 7590 02/13/2007 SEYFARTH SHAW LLP 131 S. DEARBORN ST., SUITE2400 CHICAGO, IL 60603-5803			EXAMINER MANUEL, GEORGE C	
			ART UNIT 3762	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE 3 MONTHS			MAIL DATE 02/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/817,158

Applicant(s)

BARU FASSIO ET AL.

Examiner

George Manuel

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-18 and 20-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 39-41 is/are allowed.
- 6) ☒ Claim(s) 1-5,9,16-18,22,31-34,37 and 38 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 10-15, 20, 21, 23-30, 35, 36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 22, 37 and 38 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hoffer (US 4,750,499).

Hoffer discloses a cuff configured to stimulate nerve fibers. It is inherent the device has a power source and a processor to control the FES system.

In FIG. 1, an electrical command signal is supplied to a summing junction 10 from a user-operated signal source, such as a push-button switch, a rocker switch or a hand-held manipulator.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5, 9, 16-18, 31, 32, 33, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffer (US 4,750,499).

Hoffer discloses an amplifier, rectifier and a filter in circuit 15.

Regarding claim 2, Hoffer does not specifically disclose an integrator circuit; however, one of ordinary skill in the art would have found it obvious to modify the filter disclosed in circuit 15 to comprise such an integrator because Hoffer teaches it is apparent that the feedback signal may be processed to provide other functions, such as "integral" or "derivative" feedback control. Hoffer further teaches, an integrator can be added to the feedback loop to eliminate steady state errors.

Regarding claims 3 and 4, the examiner is interpreting treating foot drop and a toe lift event to comprise intended use limitations for which the device of Hoffer is capable of performing.

Regarding claim 5, one of ordinary skill in the art would have found it obvious to disable the signal conditioning circuitry during stimulation because it is well known to provide such disabling so as not to overdrive sensing circuitry.

Regarding claims 31 and 32, it is well known to provide rechargeable batteries to implantable devices because battery replacement would otherwise require the patient to have further surgery.

Regarding claim 33, one of ordinary skill in the art would have found it obvious to program the microprocessor disclosed in Hoffer with an external communication circuit because external programming devices are well known and used to program and re-program implanted devices so the patient does not need further surgery.


Allowable Subject Matter

Claims 39-41 are allowed.

Claims 6, 7, 10-15, 20, 21, 23-30, 35, 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Manuel whose telephone number is (571) 272-4952.


George Manuel
Primary Examiner
Art Unit: 3762